

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

FAO.No. 269 of 2007

(AGAINST THE ORDER DATED 03/08/2007 IN IA 2862/2007 IN
OS.383/2007 of I ADDL.SUB COURT,TRIVANDRUM)

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APPELLANT/PETITIONER/PLAINTIFF:

SUJAN, AGED 45 YEARS, S/O NARAYANAN,
PROPRIETOR, ASIATIC ASSOCIATES,
NARAYANA MANDIRAM, POONTHURA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE

RESPONDENTS/COUNTER PETITIONERS/DEFENDANTS:

1. M/S NARBIR SINGH & CO.,
GOVERNMENT CONTRACTOR, 1-87,
STREET NO.7C MAHIPALPUR, NEW DELHI,110037
REPRESENTED BY DEFENDANTS 1 AND 2.
2. NARBIR SINGH, AGED 45,
S/O BALBIR SINGH PARTNER M/S NARBIR SINGH & CO.,
1-87, STREET NO.7C MAHIPALPUR, NEW DELHI,110037.
3. RAJENDAR SINGH, AGED 42 YEARS,
S/O BABI SINGH, M/S NARBIR SINGH & CO., 1-87,
STREET NO.7C MAHIPALPUR, NEW DELHI-110037.

BY ADV. SRI.VPK.PANICKER

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

F.A.O.No. 269 of 2007

Dated this the 30th day of October, 2007

J U D G M E N T

Raman,J:

This appeal is filed against the order in I.A.No.2862 of 2007 in O.S.No.383 of 2007 passed by the court below in an application filed by the petitioner herein seeking for an order of attachment before judgment of the petition schedule amount under Order 38 Rule 5 of the Code of Civil Procedure with a direction to the Air Port Authority not to disburse the said amount of Rs.20 lakhs to the respondents. Admittedly, the Air Port Authority of India awarded a contract in favour of the first defendant, who in turn awarded a part of the contract in favour of the appellant/plaintiff. Eventually before completing the work, a dispute arose and the contract in favour of the plaintiff was terminated. For the work already completed, the plaintiff alleging that amounts are due, filed the present suit and also filed an application seeking to attach the amount due and payable by the Air Port Authority of India

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to the first defendant. In support of the claim, the petitioner produced Exts.A1 to A3. Even though on the part of the respondents, as per the index, no exhibits are marked, it is the specific case of the respondents that along with objection, 17 documents were produced and as a matter of fact, the court below has also referred to the records produced by the defendants, but by mistake those documents were not marked and therefore, they were not shown as exhibits in the index portion. The court below found that there is no material as at present produced by the appellant to show that he had already executed the works valued at Rs.20 lakhs. Whatever materials produced by the respondents would only show that the original work awarded in favour of the appellant could not be completed. True, whether it is an abandonment of the work by the appellant or it is a termination of contract by the first defendant is a matter to be considered by the court below in the suit. However, the records produced by the counter petitioners did not show that any amount is due and

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payable to the appellant/petitioner. Therefore, a prima facie case could not be found in favour of the plaintiff. It was also observed that there is nothing on record to show that the counter petitioners were about to dispose of whole or part of the property. Of course, in this regard, whether they have got any immovable property within the jurisdiction of the court had not been considered by the court below without which there may not be any justification to record the finding to that effect. Since the amounts are due and payable to the first defendant and if such amounts are already disbursed by the Airport Authority, necessarily in the absence of any other property, the finding that they are not about to dispose of the whole or part of the property may not be quite correct. But, the burden is on the petitioner to show prima facie that amounts are due and payable to him. In the absence of any such materials produced, the finding entered into by the court below regarding the prima facie satisfaction cannot be interfered with in this appeal. In such circumstances,

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the order passed by the court below cannot be said to be wrong or illegal.

2. Whatever finding recorded by the court below is only for the limited purpose of disposing of the I.A. and therefore, cannot influence the mind of the court in assessing the evidence that may be adduced by the parties on the issues that may arise for consideration in the suit. There will be a further direction to expedite the trial of the suit as soon as the pleadings are completed.

This appeal is disposed of as above.

**P.R.RAMAN,
Judge**

**V.K.MOHANAN,
Judge**

Mbs/

F.A.O.No. 269 of 2007

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V.K.MOHANAN, J.

O.P.NO. OF 2001

J U D G M E N T

F.A.O.No. 269 of 2007

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DATED: -0-2007